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REMARKS

Claims 10 and 39-45 are currently pending in the subject application and are presently under consideration. Claim 10 has been cancelled, and claims 39, 42, 43 and 45 are amended to clarify what applicants regard as the invention. Claims 46-49 have been newly added herein to emphasize various novel features of applicants' invention.

Favorable reconsideration of the subject application is respectfully requested in view of the comments below.

I. Rejection of Claims 39, 40, and 45 Under 35 U.S.C. §102(c)

Claims 39, 40, and 45 stand rejected under 35 U.S.C. §102(c) as being anticipated by Herrod *et al.* (US Patent 6,405,049). Withdrawal of this rejection is respectfully requested for at least the following reasons. Herrod *et al.* does not teach or suggest applicants' claimed invention.

For a prior art reference to anticipate, 35 U.S.C. §102 requires that "each and every element as set forth in the claim is found, either expressly or inherently, in a single prior art reference. In re Robertson, 169 F.3d 743, 745, 49 USPQ2d 1949, 1950 (Fed. Cir. 1999) (quoting *Verdegaal Bros., Inc. v. Union Oil Co.*, 814 F.2d 628, 631, 2USPQ2d 1051, 1053 (Fed. Cir. 1987)).

The subject invention as claimed, recites features directed to an order fulfillment system that employs a bag (e.g. a tote), which is electronically matchable to a customer identification code, for a containment of items included in the order. Such aspects of applicants' claimed invention as recited in the subject claims are not taught or suggested by Herrod *et al.* Rather, Herrod *et al.* teaches a cradle and a portable data device that are in wireless communication, and allow for a minimum of processing and data storage capability at the front end of a shopping system; e.g., a customer selects a terminal from a cradle and while moving about the retail outlet access points broadcast data to the terminal – such a system does not teach or suggest a bag electronically matchable to a customer identification code, as recited in applicants' claimed invention.

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In view of the at least above comments it is readily apparent that Herrod *et al.* does not teach or suggest the subject invention as recited in; independent claim 39, and claims 40, 45 dependent therefrom, and this rejection should be withdrawn.

II. Rejection of Claims 10 and 41-44 Under 35 U.S.C. § 103(a)

Claims 10 and 41-44 stand rejected under 35 U.S.C. §103(a) as being obvious over Herrod *et al.* in view of Ross *et al.* (US Patent 5,859,628.) Withdrawal of this rejection is respectfully requested for at least the following reasons. Claim 10 has been cancelled herein. Claims 41-44 depend from independent claim 39, and Ross *et al.* does not make up for the aforementioned deficiencies of Herrod *et al.* with respect to this independent claim. Accordingly, the combination of Ross *et al.* and Herrod *et al.* does not teach or suggest applicants' invention as recited in the subject claim; and this rejection should be withdrawn.

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CONCLUSION

The present application is believed to be in condition for allowance in view of the above comments and amendments. A prompt action to such end is earnestly solicited.

In the event any fees are due in connection with this document, the Commissioner is authorized to charge those fees to Deposit Account No. 50-1063.

Should the Examiner believe a telephone interview would be helpful to expedite favorable prosecution, the Examiner is invited to contact applicants' undersigned representative at the telephone number below.

Respectfully submitted,

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